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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/605,264	TAKEDA, KAZUHIRO
	Examiner	Art Unit
	Jonathan M. Dager	3663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 April 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-50 is/are pending in the application.
 - 4a) Of the above claim(s) 5,10 and 16-33 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6-15 and 34-50 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Arguments

1. Applicant's amendments to the claims, see page 7, paragraph 3, filed 06 April 2007, to overcome the rejection of claims 1 and 34 under 35 U.S.C. 112, 2nd paragraph (lack of antecedence and indefiniteness), have been fully considered and no longer render the claims indefinite, nor is there insufficient antecedent basis for the claims. The rejection of claims 1 and 34 under 35 U.S.C. 112, 2nd paragraph (lack of antecedence and indefiniteness) has been withdrawn.

However, claim 13 remains rejected under 35 U.S.C. 112, 2nd paragraph (indefinite). The phrase "within a predetermined geographical range" is vague/unclear. It is not known what is meant and encompassed by the term "predetermined" as to what standard is used.

2. Applicant's arguments, see page 7, paragraphs 4-5, filed 06 April 2007 have been fully considered but they are not persuasive.

Applicant has stated that the Hickman et al. (US 2005/0233861) does not provide for all of the embodiments of claim 1, i.e. Hickman does not disclose calculating ranking information, but merely displays icons. Further, Applicant states that the Hickman invention contains no knowledge of calculated rank.

Examiner respectfully disagrees, and points out that Hickman discloses in the summary that the remote server can provide for competitions and group exercising

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between virtually any number of users in any number of locations. Some of the users may be in fixed locations (such as on a rowing machine or a stationary bicycle), while other users may be in mobile locations, such as bicyclists and joggers. With appropriate handicapping, a person on a stationary bicycle can race with a person on a road bicycle (or even join the Tour de France), or with a person on a rowing machine. Further, "virtual" competitions can be held wherein an exercise device represents, for example, a spaceship, such that the more energy expended by the user results in faster spaceship movement. Such "virtual" competitions may use standard sensor of the exercise equipment to "steer" the spaceships. For example, a person on a fixed rowing machine could steer by pulling harder on one oar than another, or "fire" a missile by pushing forward on both oars. However, it is anticipated that various "out of band" signals may also be used to create a virtual competition (column 2 lines 52-67).

It is an inherent characteristic of competition between a plurality of contestants is that there will be a winner and a loser. Additionally, with multiple users, a ranking system would be presented to determine who won, came in second place, etc.

Additionally, it would be obvious to one of ordinary skill at the time of the invention that the terms "amateur" and "professional" are indeed examples of ranks, as each term implies a degree of proficiency in their respective fields.

3. Applicant's arguments, see pages 7-8, paragraph 6, filed 06 April 2007 have been fully considered but they are not persuasive.

Applicant has amended claim 13 to include that the information delivery unit relays information pertaining to the bikers' positions only when they are within a predetermined proximity of each other. Applicant alleges that neither the Hickman reference or Shea (US 6,171,218) disclose this feature.

The Examiner respectfully disagrees; Hickman discloses that the mobile system illustrated in FIG. 9 can be in two-way communication via, for example, a cellular telephone system 576. Alternatively, radio modem services such as formerly provided by Ricochet, would be another communication methodology. While the server 272A could conceivably service a number of control units 270A, it is likely to be dedicated solely to that control unit. This is because bicyclists may not always be in sufficient proximity for the units 270A to communicate with a single server 272A and, in fact, bicycles that are in close proximity may not want to share the same server 272A. Exceptions include such situations as group races or competitions, such as the Tour de France. In such an instance, a server 272A could be in a pace car, which would service a number of controllers associated with individual bicycles (column 27 lines 1-13).

Thus, the localized server kept in a pace car in a bicycle race could relay bicycle information between members of the same team that are within transmitting range of said server.

4. Applicant's arguments, see page 8, paragraph 1, with respect to claim 15, filed 06 April 2007 have been fully considered but they are not persuasive.

Applicant states that in claim 15, Shea nor Hickman disclose or teach that geographical information can be shared between bicyclists.

The Examiner respectfully disagrees, and points out that in the rejection of claim 13, it was shown that a single server could conceivably control a number of control units. Hickman shows how a pace car can be used as a server and an intermediary for bicycle information for a team, and further discloses that the server 272A is also preferably included with a variety of sensor inputs, including GPS from multiple satellites 578, altimeter readings based on, for example, atmospheric pressure or, alternatively calculated from GPS information, inclinometers, etc. In this fashion, a mobile exercise device user can interact with a remote server, a trainer, or compete against other mobile and/or fixed exercise devices. For example, a user can be riding the bicycle while data such as distance, speed, RPM, elevation gain, etc., are transmitted to the remote server and provided to the trainer (column 27 lines 13-23).

5. Applicant's arguments, see page 8, paragraph 2, with respect to claims 35 and 36, filed 06 April 2007 have been fully considered but they are not persuasive.

Applicant states that in claims 35 and 36, the prior art neither suggests nor discloses communication of ranking data calculated from cycling distance or time between bicycle users.

Examiner respectfully disagrees, and points out, as mentioned above, that the method and apparatus of Hickman can be used to supervise a virtual bicycling competition, and that biking distance and speed from an individual bicycle can be

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relayed back to the server. Once again, since the system is holding a competition, it would be inherent that the system would be using the individual bicyclists' speeds and distances to calculate a rank for them.

6. Applicant's arguments, see page 8, paragraph 3, with respect to claim 37, filed 06 April 2007 have been fully considered but they are not persuasive.

Applicant states in claim 37 that the cited prior art neither discloses nor suggests that the bicyclists in competition which are registered to the server can communicate their ranking information toward each other.

Examiner respectfully disagrees, and points out, as mentioned above and shown in Figure 13, that in a competition the server and the internet connect all participants to each other. In this way, and as explained in the above-mentioned claims, the participants can receive information about each other.

7. Applicant's arguments, see page 8, paragraphs 4-5, with respect to claim 34, filed 06 April 2007 have been fully considered but they are not persuasive.

Initially, Applicant alleges that Rice (US 2004/0210353) is non-analogous art, that there is no suggestion to combine, and that Rice does not provide for any of the embodiments of the claim.

Examiner respectfully disagrees for the following reasons:

In response to applicant's argument that Rice is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if

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not, then be **reasonably pertinent** to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Rice has provided an invention which monitors the movement of a vehicle and stores the driver history. Information such as driving time, location of vehicle, and distance traveled, are monitored, then stored, so that they can be compared against predetermined minimums for each respective measurement.

Rice is mainly drawn to monitoring a vehicle remotely and data interpretation; this is more than reasonably pertinent. While there is mention of the system and method of Rice being used by insurance companies, the invention as presented is drawn to the system and method of monitoring said vehicle, and it is only suggested that insurance companies can use the data provided to establish premiums.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Hickman discloses a system that also permits amateurs (presumably on fixed exercise devices) to compete with professionals on mobile exercise devices. This provides the suggestion in that a driver history can provide the server with a degree of proficiency.

The Examiner relies upon the Hickman reference as modified for Shea to encompass all of the embodiments of claim 1, including sharing information between users, but does not disclose historical ranking of user data. The historical data is provided by Rice.

Rice discloses that in one embodiment of the invention, a score for ranking the quality of driving of the driver of the vehicle is computed as a function of the number of infringements recorded, and the computed score stored (para 0016 line 1). Thus, Hickman, as modified by Shea, in view of Rice, encompasses all of the embodiments of claim 37.

8. Applicant is reminded that the statements of intended use or field of use, e.g., "identifying, corresponding, wherein, whereby, etc..." clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is Intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim.. Ex_x. parte Masham, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

9. As to limitations which are considered to be inherent in a reference, note the case law of In re Ludtke, 169 U.S.P.Q. 563; In re Swinehart, 169 U.S.P.Q. 226; In re Fitzgerald, 205 U.S.P.Q. 594; In re Best et al, 195 U.S.P.Q. 430; and In re Brown, 173 U.S.P.Q. 685, 688.

Response to New Claims/Embodiment

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 43-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding independent claim 43, which is drawn to a bicycle user information system and method. The claim language lists the components of the system as well as

their respective uses. The claim then ends with a method for using the system described. A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph (MPEP 2173.05 (p), section II).

Regarding dependant claim 44, the claim is drawn to the method according to claim 43. Since claim 43 is indefinite due to claiming an apparatus and a method, claim 44 has been rendered indefinite.

Regarding dependant claims 45-50, the claims are drawn to an apparatus. Since all listed claims depend, directly or indirectly, from the indefinite claim 43, they are rendered indefinite.

Claim Rejections - 35 USC § 101

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. The claimed invention (claims 43-50) is directed to neither a process nor a machine, but rather embraces or overlaps to statutory classes of invention as set forth in 35 U.S.C. 101.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 43-50 are rejected under 35 U.S.C. 102(e) as being anticipated by

Hickman et al. (US 6,921,351)

Regarding claim 43, Hickman discloses a system including computerized exercise and/or health equipment (the "local system") that can provide feedback and encouragement to the user, i.e. can serve as a "virtual personal trainer." These local systems often include a local server to service multiple exercise devices. In addition, the system includes a remote system communicating over a bi-directional data channel (preferably the Internet) with the exercise and health equipment. This remote system can include remote servers communicating with the local system, and remote work stations used by trainers and users to interact with the remote servers and local systems (column 2 lines 22-34).

Next, Hickman discloses that a remote server can link multiple users together. The remote server can be considered to be the communication tool of a human personal trainer via a workstation, as opposed to the "virtual personal trainer" emulated by software in the local system. Further, the remote server can provide for competitions and group exercising between virtually any number of users in any number of locations. Some of the users may be in fixed locations (such as on a rowing machine or a stationary bicycle), while other users may be in mobile locations, such as bicyclists and

joggers. With appropriate handicapping, a person on a stationary bicycle can race with a person on a road bicycle (or even join the Tour de France), or with a person on a rowing machine. Further, "virtual" competitions can be held wherein an exercise device represents, for example, a spaceship, such that the more energy expended by the user results in faster spaceship movement. Such "virtual" competitions may use standard sensor of the exercise equipment to "steer" the spaceships. For example, a person on a fixed rowing machine could steer by pulling harder on one oar than another, or "fire" a missile by pushing forward on both oars. However, it is anticipated that various "out of band" signals may also be used to create a virtual competition.

Lastly, a distributed wide area network (WAN) such as the Internet is used to couple local servers, remote servers, and workstations together. Users at local systems can interact visually and even in a tactile manner with other users over the Internet (columns 2-3, lines 49-67, and 1-8 respectively).

Additionally, it is well known to one of ordinary skill in the art that individuals wishing to use certain Internet technologies have to register with the system at their local workstations.

Regarding claims 44-50, Hickman discloses, as mentioned in response to arguments, that the remote server can provide for competitions and group exercising between virtually any number of users in any number of locations. Some of the users may be in fixed locations (such as on a rowing machine or a stationary bicycle), while other users may be in mobile locations, such as bicyclists and joggers. With appropriate

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handicapping, a person on a stationary bicycle can race with a person on a road bicycle (or even join the Tour de France), or with a person on a rowing machine. Further, "virtual" competitions can be held wherein an exercise device represents, for example, a spaceship, such that the more energy expended by the user results in faster spaceship movement. Such "virtual" competitions may use standard sensor of the exercise equipment to "steer" the spaceships. For example, a person on a fixed rowing machine could steer by pulling harder on one oar than another, or "fire" a missile by pushing forward on both oars. However, it is anticipated that various "out of band" signals may also be used to create a virtual competition (column 2 lines 52-67).

It is an inherent characteristic of competition between a plurality of contestants is that there will be a winner and a loser. Additionally, with multiple users, a ranking system would be presented to determine who won, came in second place, etc.

Further, Hickman discloses that the mobile system illustrated in FIG. 9 can be in two-way communication via, for example, a cellular telephone system 576. Alternatively, radio modem services such as formerly provided by Ricochet, would be another communication methodology. While the server 272A could conceivably service a number of control units 270A, it is likely to be dedicated solely to that control unit. This is because bicyclists may not always be in sufficient proximity for the units 270A to communicate with a single server 272A and, in fact, bicycles that are in close proximity may not want to share the same server 272A. Exceptions include such situations as group races or competitions, such as the Tour de France. In such an instance, a server

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272A could be in a pace car, which would service a number of controllers associated with individual bicycles (column 27 lines 1-13).

Thus, the localized server kept in a pace car in a bicycle race could relay bicycle information between members of the same team that are within transmitting range of said server.

Next, Hickman discloses a user can be riding the bicycle while data such as distance, speed, RPM, elevation gain, etc., are transmitted to the remote server and provided to the trainer.

Thus, the localized server kept in a pace car in a bicycle race could relay bicycle information specifically distance or time information between members of the same team that are within transmitting range of said server.

Finally, Hickman discloses that a single server could conceivably control a number of control units. Hickman shows how a pace car can be used as a server and an intermediary for bicycle information for a team, and further discloses that the server 272A is also preferably included with a variety of sensor inputs, including GPS from multiple satellites 578, altimeter readings based on, for example, atmospheric pressure or, alternatively calculated from GPS information, inclinometers, etc. In this fashion, a mobile exercise device user can interact with a remote server, a trainer, or compete against other mobile and/or fixed exercise devices. For example, a user can be riding the bicycle while data such as distance, speed, RPM, elevation gain, etc., are transmitted to the remote server and provided to the trainer (column 27 lines 13-23).

Claim Rejections - 35 USC § 103

14. Claims 39-42 have been added to the first embodiment of the invention. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickman (US 2005/0233861), in view of Shea (US 6,171,218) as previously modified, and further in view of Rice (US 2004/0210353)

Regarding claims 39-41, Applicant's arguments, see page 8, paragraph 6, with respect to claims 39-41, filed 06 April 2007 have been fully considered but they are not persuasive.

Applicant states that none of the prior art discloses this material alone or in combination. This is due to its dependency on claim 34.

The Examiner respectfully disagrees, and points to the above rationale for the rejection of claim 34. Further, it has been shown in the above in this action that Hickman discloses a system which can disseminate pertinent data to registered users, including ranking, distance, and time information.

16. Applicant's arguments, see page 8, paragraph 7, with respect to new claim 42, filed 06 April 2007 have been fully considered but they are not persuasive.

Applicant states that claim 42 as presented is distinguished over the prior art due to item-by-item ranking of historical data.

The Examiner respectfully disagrees, and points out that Hickman, as modified by Shea teaches all of the embodiments of claim 1, including sharing of information, including rank, between registered bicycle users over the server. Hickman, as modified by Shea, does not disclose ranking the user on a historical item-by-item basis.

17. However, Rice discloses that the driver is then given a ranking score which is computed from the number of infringements in the respective speed zones and the infringements are weighted, the higher weightings being assigned to infringements in the higher speed zones, and weighting is also given to infringements depending on the amount by which the speed limit in the respective speed zones has been exceeded (abstract).

Since Rice discloses a system in which items are weighted in determining a ranking, it would be obvious to one of ordinary skill in the art at the time of the invention to use the system of Hickman, as modified by Shea, in view of Rice to also compile a ranking system on an item-by-item basis. Doing so would provide an additional ranking system.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan M. Dager whose telephone number is 571-270-1332. The examiner can normally be reached on 0830-1800 (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jonathan Dager
15 May 2007

JACK KEITH
SUPERVISORY PATENT EXAMINER